

NOV 18 2002

Before the

**Federal Communications Commission** FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
Washington, DC 20554

In the Matter of	)	MM Docket No. 01-65
	)	RM-10078
Amendment of Section 73.202(b),	)	RM-10188
Table of Allotments,	)	RM-10189
FM Broadcast Stations.	)	
(Emmetsburg and Sibley, Iowa,	)	
and Brandon, South Dakota)	)	

To: Assistant Chief, Audio Division

**PETITION FOR RECONSIDERATION**

Saga Communications of Iowa, LLC ("Saga"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby files this Petition for Reconsideration of the action of the Assistant Chief, Audio Division, Media Bureau, in the Division's Report and Order in *Emmetsburg, Sanborn and Sibley, Iowa, and Brandon, South Dakota*, DA 02-2389, released September 27, 2002. Public Notice was given in 67 Fed Reg. 64046, published October 17, 2002 (herein "*R&O*")<sup>1</sup>. The *R&O* denied Saga's counterproposal that sought to reallocate FM Channel 261C3 for vacant channel 261A at Brandon, South Dakota. Saga's counterproposal is mutually-exclusive with the proposal of Eisert Enterprises, Inc., ("Eisert") that requested the substitution of Channel 261C3 for Channel 261A at Emmetsburg, Iowa, and modification of the license of Station KDWD (originally proposed in the Notice of Proposed Rule Making<sup>2</sup> in this Docket). Eisert filed its own counterproposal making the further request to delete Channel 262A at Sibley,

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<sup>1</sup> As public notice was given on October 17, 2002, pursuant to Section 1.4 of the Rules, this petition is timely filed by November 18, 2002, since the 30<sup>th</sup> day following public notice fell on a holiday (Saturday).

<sup>2</sup> *Emmetsburg and Sibley, Iowa*, 16 FCC Rcd 4932 (2001) (herein "NPRM.")

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Iowa, and allot Channel 264A to Sanborn, IA, as a first local service. The Audio Division allotted Channel 261C3 to Emmetsburg, allotted Channel 264A to Sanborn, and deleted Channel 262A at Sibley, Iowa. Saga shows herein that the Audio Division erred in its *R&O*, and that the Division should reverse its action and allot Channel 261C3 to Brandon, South Dakota, as Saga has proposed. New census figures require the adoption of Saga's counterproposal. Under Section 1.429(b) of the Commission's rules, a petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under certain circumstances, which include that the facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission. Here, the 2000 census data for the communities involved was not available at the time the counterproposals were filed in this proceeding, April 23, 2001. Since the 2000 figures materially affect the population analysis, this new evidence should be considered in this petition for reconsideration. In support of reconsideration, Saga shows the following:

#### **Emmetsburg, Iowa**

According to the Technical Comments filed with Saga's Counterproposal, Emmetsburg, Iowa, had a 1980 population of 4,621. Saga showed that Emmetsburg had a 1990 population of 3,940. In the 2000 census, Emmetsburg grew by only 18 souls to 3,958.<sup>3</sup> Thus, there was a loss in population of about 14% since 1980 and the population remained essentially flat for the ten years following the 1990 census. The community is currently served by Class A FM Station KDWD operating on Channel 261A, which is licensed to Eisert. This docket was initiated by Eisert's petition for rule making. The

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<sup>3</sup> Saga requests official notice of the 2000 U. S. Census figures

NPRM reiterated Eisert's statement that upgrading its station from Class A to Class C3 would provide service to an additional 24,193 persons while continuing to place a city grade signal over Emmeisburg. In order to accommodate its proposal, Eisert requested the deletion of vacant channel 262A at Sibley, Iowa. The Commission noted its belief that Eisert's proposal would serve the public interest; however, if an expression of interest were filed during the comment cycle in this proceeding, the Commission stated it would retain the channel in Sibley.

### **Sibley, Iowa**

The R&O deleted Channel 262A from Sibley, Iowa. Channel 262A became vacant with the expiration December 21, 2000, of a construction permit (File No. BPH-19960521JA) to operate on the channel. No opportunity has become available for parties to file applications for use of the channel. With the deletion of Channel 262A, Channel 282A will remain at Sibley, although it is also vacant.

### **Brandon, South Dakota**

As an alternative to Eisert's proposal, Saga proposed the upgrade of vacant<sup>4</sup> Channel 261A at Brandon, South Dakota,<sup>5</sup> to Channel 261C3. Brandon had a 1990 population of 3,543. The 2000 U. S. Census found Brandon had a population of 5,693, a gain of about 38% since 1990. The Technical Comments indicated that the upgrade

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<sup>4</sup> By *Report and Order*, DA98-2251, released November 6, 1998, *petition for reconsideration denied*, DA 00-2226, released September 29, 2000, the Commission allotted Channel 261A to Brandon, South Dakota (first local service), as a preferred arrangement of allotments over a proposal to substitute Channel 261C3 for Channel 262A at Sibley, Iowa, and modify the unbuilt (and now deleted) construction permit of former KAJQ, Sibley, Iowa.

<sup>5</sup> The present coordinates for Channel 261A at Brandon are 43-36-01 and 96-31-15. The allocation site for Channel 261C3 at Brandon is 45-35-45 and 96-30-50.

would be mutually-exclusive with the Eisert proposal and would also require the deletion of Channel 262A at Sibley, Iowa. From the allocation site, a city grade signal would be placed over Brandon.

### **Comparison of Proposals With 2000 Census Data**

Saga's counterproposal represents a preferential arrangement of allotments. Attached is a Technical Statement in support of this petition which provides updated information as to the population served by the proposals. The revised census information shows that the current use of Channel 261A at Brandon would provide 60 dBu (1 mV/m) service to 159,291 persons. An upgrade to Channel 261C3 would provide 60 dBu service to 186,606 persons, an increase of 27,274 persons. Upgrading KDWD from Class A to Class C3 would increase the 60 dBu coverage of KDWD from 24,466 persons to 49,405 persons, and increase of 24,939 persons. Saga's counterproposal would provide service to 2,376 more persons than would Eisert's proposal.

On the grounds stated in the *R&O*, Saga's counterproposal is preferred to Eisert's. The Audio Division (at *R&O* para. 5) stated: "Under our precedent, mutually exclusive upgrade proposals are generally compared under priority (4) on the net gain of population in their 1 mV/m service contour," citing *Greenup, KY and Athens, OH*, 6 FCC Rcd 1493, 1495 (1991). Under *Revision of FM Allotment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM priorities are as follows: (1) first fulltime aural service, (2) second fulltime aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to Priorities (2) and (3). In making its evaluation, the Commission considers the "totality of factors." See *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995). Additional public interest factors include the overall population to be

served by Saga's proposal — 186,606 as opposed to Eisert's proposed coverage of only 49,405 persons. In addition, as Saga previously showed, Emmetsburg has lost population since the 1980 Census, picked up only 18 persons in the 10 years between the 1990 and 2000 censuses, while during the same period the population of Brandon has increased dramatically. The allotment of Channel 264A to Sanborn, Iowa, proposed by Eisert, and supported by Saga, does not comparatively improve Eisert's or Saga's proposal.

In its *R&O*, the Audio Division ignored Saga's citation of a similar case, *Benton, Clarksville, Dardanelle, El Dorado, Hampton, Harrison, Huntsville, Mena, Ozark and Sherwood, Arkansas; Homer, Louisiana; Sallisaw and Vinita, Oklahoma; Hooks and Kilgore, Texas*, 7 FCC Rcd 2555 (1992), where the Commission, *inter alia*, authorized the upgrade of Station KAKI, Benton, Arkansas, because it would serve a significantly greater number of persons within its 1 mV/m gain area:

“After careful consideration of this matter, we affirm our earlier action upgrading Station KAKI, Benton, Arkansas, to specify operation on Channel 294C2. We emphasize that the Benton proposal will serve a significantly greater number of persons within its 1 mV/m gain area (419,438 compared to 117,489). This is a significant preference under priority 4.”

In the case at bar, the upgrade of Channel 261A at Brandon to Channel 261C3 will serve a larger net gain in population, and a significantly greater number of persons within its 1 mV/m gain area (186,606 compared to Eisert's 49,405). This *is* a significant preference under priority 4, and results in a preferential arrangement of allotments.

### **Expression of Interest**

Saga expressed interest in the Brandon allotment, and restates that expression of interest here. Saga stated that if the Commission allots Channel 261C3 to Brandon, South Dakota, Saga, or an affiliate, will during the applicable future filing window, file an application on FCC Form 175 in order to participate in any future auction and will

participate in any such auction (if one or more mutually-exclusive Forms 175 are timely filed). If Saga's application is a "singleton," (i.e., not mutually exclusive with another application for the same construction permit), or if Saga is the successful high bidder at the auction, Saga will timely file FCC Form 301 (long-form application) for construction permit for a new commercial radio station on Channel 261C3 at Brandon, South Dakota, and if Saga obtains a grant of the construction permit, Saga will timely construct a new station in compliance with the Commission's construction permit authorized as a result of this allotment.

### **Conclusion**

In light of the above, the Commission should deny Eisert's proposal, and instead, delete Channel 262A at Sibley, Iowa, and substitute Channel 261C3 for Channel 261A at Brandon, South Dakota, as set forth in the following table:

#### **Iowa**

<i><b>Community</b></i>	<i><b>Present Channel</b></i>	<i><b>Proposed Channel</b></i>
Sibley	262A, 282A	282A
Emmetsburg	261A	261A(no change)
Sanhom	None	264A

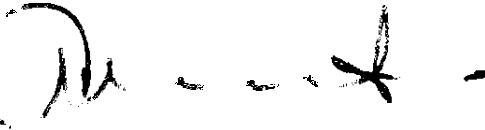
#### **South Dakota**

Brandon	261A	261C3
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Wherefore, Saga respectfully requests the Audio Division to reverse the action taken in its *R&O* and adopt its counterproposal as described herein

Respectfully submitted,

**SAGA COMMUNICATIONS  
OF IOWA, LLC**

By:   
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November 18, 2002

**Attachment**

**Technical Statement**

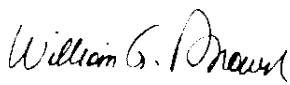


**TECHNICAL COMMENTS**  
**In support of the assignment of Channel 261C3**  
**Brandon, South Dakota**  
November 2002

The Commission has two proposals to consider. One will be to upgrade KDWD at Emmetsburg, Iowa from Channel 261A to Channel 261C3. The other proposal upgrades a vacant allotment at Brandon, South Dakota from Channel 261A to Channel 261C3. During the time of the original Petition for Rulemaking and its Counterproposal, the 1990 US Census was all that was available. At this time the 2000 US Census has been released. The following census figures are a comparison between the 1990 and the 2000 US Census and it includes persons within the proposed 60 dBu contours. To project the 60 dBu contour for the allocated and proposed upgraded facilities, we assumed maximum class A and C3 facilities. KDWD is a licensed facility, so we assumed those facilities in projecting that 60 dBu contour.

	Census Data	
	<u>2000</u>	<u>1990</u>
KDWD Present (licensed) 60 dBu	24,466 <sup>1</sup>	24,862
Proposed Upgrade to Class 261C3	<u>49,405</u>	<u>49,467</u>
<b>Net gain for Emmetsburg</b>	<b>24,939</b>	<b>24,605</b>
Allotment Channel 261A (Brandon, SD)	159,291	130,088
Proposed Upgrade at Brandon Channel 261C3	<u>186,606</u>	<u>153,478</u>
<b>Net gain for Brandon</b>	<b>27,274</b>	<b>23,390</b>
Using 1990 Census Emmetsburg exceeds gain at Brandon by:		1,215
Using 2000 Census Brandon exceeds the gain at Emmetsburg by:		<b>2,376</b>

Bromo Communications, Inc.

  
William G. Brown

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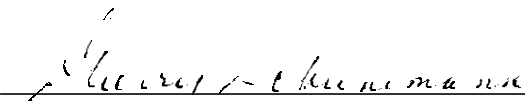
<sup>1</sup> Population figures within the 60 dBu contours are extracted from the US Census 1990 and 2000 population. The population is divided into centroid blocks if a portion of the block is inside the 60 dBu contour then it is added to the population figure. This procedure was applied evenly to all population values listed above.

**CERTIFICATE OF SERVICE**

I, Sherry Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., certify that on this 18th day of November, 2002, copies of the foregoing were mailed, postage prepaid, to the following:

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(\*) By hand delivery